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Supreme Court of the United States
United States Tax Court
11th Circuit Court of Appeals, Atlanta, Georgia
All State Courts Tennessee * Florida
Federal Court, Middle District Tennessee
Federal Court, Middle District of Florida
Supreme Court Tennessee

Primary Response #
(813) 714-2833 (24 hr)
(615) 799-6358 (fax)

Richard Militana, Esq. FL-TN
*B.J. Militana, Esq. FL-NY (1912-1992)

December 13, 2004

SENT VIA FACSIMILE (615) 252-6363 (confirmed by office record)

Henry Walker, Esquire
P.O. Box 198062
Nashville, Tennessee 37219

Re: Matter: In Re: Petition of Kings Chapel Capacity, LLC
Docket No.: 04-00335
Matter: Depositions Duces Tecum regarding persons most knowledgeable from Tennessee Wastewater Systems, Inc. and On Site Capacity Development Company as it relates to the above described matter.

Dear Henry:

I am in receipt of your letter dated December 10, 2004 wherein you acknowledge service of the subpoenas, duces tecum, on both Charles Pickney and Robert Pickney on behalf of Tennessee Wastewater Systems, Inc. and On Site Capacity Development Company, as their respective interests appear, for the deposition set on the date, time and location appearing upon the subpoenas. I am sure you are aware that once a subpoena has been issued and served it must be honored save only for a motion for a protective order and hearing. I cannot cooperate in your clients' violation of a validly served subpoena. You were contacted in advance of the filing of these subpoenas and agreed to these depositions but failed to provide dates, times or places convenient to your client although solicited. We both are subject to the Order Establishing Procedural Schedule signed by Jean A. Stone, Hearing Officer which requires that all preliminary discovery be completed by December 15, 2004. I further note that the December 3, 2004 Procedural Order does not, as you assert limit discovery or preclude depositions but does specifically reference "All discovery". Since I contacted you in advance of the filing of the December 6, 2004 Discovery Requests and you advised me that it was customary not to include

Depositions in the form for Requested Discovery and further assured me that you would cooperate with depositions of the persons most knowledgeable about these proceedings from Tennessee Wastewater Systems, Inc. and On Site Capacity Development Company as well as Charles Pickney individually with all to be completed within the December 15, 2004 deadline established by the hearing officer, I expected your cooperation with discovery not obstruction to it. As I did not hear from you as agreed, I requested the issuance of subpoenas through Chuck Welch, Esquire. Your objection, as outlined in your letter is that they were set in Williamson County, please accept this offer to take them in any other location convenient to you and your clients upon which we can agree in writing. I intend that these depositions be taken specifically in the TRA case and will not agree to limit my clients rights relative to discovery in other cases, so it is unnecessary to gain approval from any attorney outside of the TRA matter. This should expedite matters and avoid confusion regarding relevancy.

Having removed your primary objection to location, and in the light of the served subpoenas, unless I hear from you I will assume that the depositions will proceed as scheduled as I note no motion for a protective order has been filed.

Henry we both sat in front of Ms. Stone and agreed to her schedule for discovery and disposition of this matter. You assured her that you would not attempt to delay these proceedings. I am well aware that the discovery dates set by Ms. Stone do not reflect the general timelines for discovery under Tennessee Rules of Civil Procedure but Ms. Stone was well within her rights, especially in the light of the fact that you agreed to an expedited process, including discovery, which she incorporated in her Procedural Order which was agreed upon by all counsels on behalf of their clients.

I suggest that we cooperate with each other and complete discovery by the deadlines established by the Hearing Officer so that the public at large will not suffer additional and unwarranted delays in service occasioned by your clients' obstruction of discovery and frivolous filings of abatement within this process. With the consent of the scheduling officer I am willing to consider agreement on any alternate date before the deadline of December 15, 2004 set by Ms. Stone and agreed upon by us both.

Very truly yours,
MILITANA & MILITANA


Richard Militana, Esquire

RM/dkm

cc: Jean Stone, Hearing Officer
Chuck Welch, Esquire

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FACSIMILE COVER SHEET

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TO: TRA
Jean Stone, Hearing Office
FROM: MILITANA & MILITANA

DATE: 12/13, 2004

FAX SENT TO: (615) 532-7479

RE: Petition: Kenip Chapel Capacity Docket # 04-00335

Re: Discovery

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